



REPORT OF THE COMMISSION
FOR THE PURPOSE OF
Examining the Torrens Land Transfer
Act of Australia

1895



GIFT OF

**DOCUMENTS
DEPT.**



Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

California
REPORT OF THE COMMISSION

FOR THE PURPOSE OF

Examining the Torrens Land Transfer
Act of Australia,

TO THE

SENATE AND ASSEMBLY

OF THE

THIRTY-FIRST SESSION OF THE LEGISLATURE OF THE STATE OF CALIFORNIA.



SACRAMENTO:

STATE OFFICE, : : : : A. J. JOHNSTON, SUPT. STATE PRINTING.

1895.

HD 1208
-C3
DOCUMENTS
DEPT.

CONTENTS.

Officers	Sections 1 to 4
Bringing land under Act	Sections 5 to 27
The register of titles	Sections 28 to 31
Effect of registration	Sections 32 to 41
Transfer	Sections 42 to 52
Mortgages, leases, and other charges	Sections 53 to 60
Attorneys in fact	Section 61
Trusts, conditions, and limitations	Sections 62 to 65
Estates in probate, in insolvency, and in equity proceeding	Sections 66 to 69
Tax sales	Sections 70 to 75
<i>Lis pendens</i> ; notice of action	Sections 76 to 77
Liens, executions attachments, etc.	Sections 78 to 82
Correction of errors in certificate	Sections 83 to 85
Eminent domain	Section 86
Indices	Sections 87 to 88
Miscellaneous	Sections 89 to 93
Penalties	Sections 94 to 96
Fees	Section 97
Construction	Section 98

REPORT.

SACRAMENTO, January 15, 1895.

To the Senate and Assembly of the Thirty-first Session of the Legislature of the State of California:

The Commission appointed by the Governor in accordance with the provisions of an Act of the thirtieth session of the Legislature (Laws of 1893, page 121) to report to the thirty-first session of the Legislature on the Torrens Land Transfer Act of Australia has completed its work, and reports as follows:

Under the terms of the Act creating the Commission, the purposes of the same were stated to be that "of examining the methods of land transfer and registration as existing under the Torrens Land Transfer Act of Australia, and of preparing a system for the State of California in accordance with said Act, and of reporting the same with an opinion thereon."

This system of land transfer was proposed by Sir Robert Torrens, Bart., and came into operation in South Australia in 1856. The chief benefit of the system is the indefeasible nature of the title obtained, together with the speed, certainty, and low cost of transfer; and modifications of the original Act have been in operation since 1861 in Queensland, since 1862 in Victoria and also in New South Wales, since 1863 in Tasmania, since 1870 in New Zealand and British Columbia, since 1874 in Western Australia, and since 1885 in Ontario and Manitoba. The Torrens Land Transfer system has been thoroughly and successfully tried, and the laws creating the same have never been repealed in the countries where it has been adopted.

Commissions similar to the present one have been appointed in the States of Massachusetts, Ohio, Iowa, and Illinois; and have recommended to the Legislatures of their respective States the passage of Acts similar to the one herewith presented.

One of the essential features of all these Acts is the creation of an officer termed a Registrar of Titles, with judicial power to pass finally and conclusively upon the title to land, not only upon the original application for bringing it within the provisions of the Act, but also upon subsequent transfer or transmission of said property.

In the opinion of the Commission, this feature of the Act was subject to two very serious if not insuperable objections: first, by reason of the provision of the Constitution of our State (Art. 6, Sec. 5), that "the

Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title to possession of real property the Registrar of Titles could not be clothed with judicial power; second, because of the very large number of salaried officers which already exist under our State and county governments, it seems to the Commission ill-advised to create additional officers. The first of these objections we believe has been overcome by providing that applications for bringing land under the operation of this Act shall be made to our Superior Courts in proceedings similar to our present action to quiet title; the second, by providing that County Recorders shall be ex officio Registrars of Titles without additional compensation.

We have also deemed it desirable to make the operation of the Act optional, so that no land owner may be compelled to avail himself of the privileges of the statute. If adopted the new system will go hand in hand with the old, and therefore the change will be gradual, so that no disturbance of existing titles may be apprehended.

The majority of the Commission submit the accompanying Act, which is a modified form of the Torrens Land Transfer Act. They have adapted the system to the existing laws of the State, and believe the constitutional objections to have been avoided. At the same time it is submitted with the full consciousness of the fact that the proposed system is a new departure from the old, and that this report should receive careful consideration, and, perhaps, revision by the Judiciary Committee before its adoption, which is hereby recommended.

Respectfully submitted.

EDSON F. ADAMS.
ROBT. N. BULLA.
BART BURKE.
ELLIOTT McALLISTER.

AN ACT

FOR THE

CERTIFICATION OF LAND TITLES AND THE SIMPLIFICATION OF THE TRANSFER OF REAL ESTATE.

*The People of the State of California, represented in Senate and Assembly,
do enact as follows:*

COUNTY RECORDERS EX OFFICIO REGISTRARS.

SECTION 1. Recorders to be Registrars.

SECTION 1. Recorders and ex officio Recorders in the several counties of this State shall be Registrars of Titles in their respective counties, and their deputies shall be Deputy Registrars. Such officers and their deputies shall receive no additional compensation for services rendered as Registrars or Deputy Registrars, but all laws relative to Recorders and their deputies, including their compensation, clerk hire, and expenses, shall extend to Registrars and their deputies, so far as the same may be applicable. Registrars of Titles shall be county officers within the meaning of the laws of the State.

SECTION 2. Bonds of Recorders to cover their duties as Registrars.

SEC. 2. The official bonds now required by law to be given by Recorders and ex officio Recorders before entering upon the discharge of their duties, shall also apply to and cover the faithful discharge of their duties as Registrars, whether such additional condition be specifically provided for in such bonds or not.

SECTION 3. Deputies may act.

SEC. 3. Deputies may perform any and all duties of the Registrar, in the name of the Registrar, and the acts of such deputies shall be held to be the acts of the Registrar.

SECTION 4. Registrar and deputy not to practice law.

SEC. 4. Registrars and Deputy Registrars are prohibited from practicing law, or acting as attorneys or counselors at law, or having as a partner a lawyer or any one who acts as such, or from acting as searchers of title under this Act.

BRINGING LAND UNDER THE ACT.

SECTION 5. Application by verified petition; character of applicant; county of application.

SEC. 5. Land may be brought under the operation of this Act by the filing with the County Clerk of a verified petition to the Superior Court of the county within which such land is situated, by the owner of any

estate or interest in such land, whether legal or equitable (other than an undivided share or an easement). Persons who collectively claim to hold the entire legal estate in fee simple may jointly file such petition. A corporation may apply by its authorized agent, an infant by his guardian; any other person under disability by his guardian. Land constituting a single parcel and lying partly in two or more counties may be included in one application, which may be made in either county in which the land lies, but the certificate issued therefor must be filed with the Registrars of all the counties within which such land is situate. Two or more contiguous parcels of land may be included in one application if owned by the same person and in the same right.

SECTION 6. Contents of application.

SEC. 6. The petition shall set forth substantially:

(a) The name, occupation, and place of residence of the applicant, and if the application is by one acting in behalf of another, the name and place of residence and capacity of the person so acting.

(b) Whether the applicant (except in case of a corporation) is married or not, and, if married, the name and residence of the husband or wife.

(c) The description of the land. Only contiguous pieces of land shall be included in one application.

(d) The applicant's estate or interest in the same, and whether the same is subject to an estate of homestead.

(e) Whether the land is occupied or unoccupied, and, if occupied, the name and post office address of each occupant, and what estate or interest he has or claims in the land.

(f) Whether the land is subject to any easement, lien, or incumbrance, and, if any, the name and post office address of each holder thereof, and the nature and amount of the same, and, if recorded, the book and page of the record.

(g) Whether any other person has any estate or claims any interest in the land, in law or equity, in possession, remainder, reversion, or expectancy, and, if any, the name and post office address of every such person, and the nature of his estate or claim.

(h) The names and post office addresses of all the owners of the adjoining lands, so far as he is able, upon diligent inquiry, to ascertain the same.

(i) If the applicant is a male, that he is of the full age of twenty-one years; if a female, that she is of the full age of eighteen years. If the application is on behalf of a minor, the age of such minor shall be stated. If the application is by a husband or wife, and the property is community property, the petition must so state and both spouses must join therein. A plat or plan of survey of the land made by the County Surveyor must accompany the application, and if said land is a part of a city, town, or subdivision, the application must refer to the book and page of the records of the county where the map of said city, town, or subdivision is recorded, if at all.

Each application must be accompanied by an abstract of the title, verified by the searcher making the same, as required in proceedings in partition, or, if made by a corporation engaged in the business of making and certifying abstracts of title, then in lieu of the affidavit a certificate by such corporation, under its seal, shall be sufficient. When the

title to the land in question has been previously determined by a final decree of Court of competent jurisdiction such abstracts need not antedate such decree unless required by the Court in which such application is filed. No person or corporation shall be authorized to make or furnish such abstracts of title until after entering into an undertaking with two or more sufficient sureties to the people of the State of California in a sum not less than fifteen thousand dollars, which may be increased from time to time by order of the Court. Such bonds shall be recorded in the record of official bonds in the Recorder's office of the county and then filed in the County Clerk's office. Said bond shall be conditioned to pay all damages and costs which the State may sustain by reason of any error or insufficiency in said abstract. The sureties on such bond shall qualify as provided in section ten hundred and fifty-seven of the Code of Civil Procedure, and the sufficiency of the bond and of the sureties thereon shall be approved by a Judge of the Superior Court of the county where such bond is to be filed. The sureties upon such bond may become severally liable in portions of not less than five hundred dollars each, making in the aggregate at least two sureties for the whole sum. Said bond shall be renewed as often, at least, as once in every period of three years.

SECTION 7. Registration of fee simple must precede all else.

SEC. 7. No mortgage, lien, charge, or lesser estate than a fee simple shall be registered unless the fee simple to the same land is first registered.

SECTION 8. Registration not to be refused because of incumbrance.

SEC. 8. It shall not be an objection to bringing land under this Act, that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, lien, or charge; but every such lesser estate, mortgage, lien, or charge shall be noted upon the certificate of title and the duplicate thereof, and the title or interest certified shall be subject only to such estates, mortgages, liens, and charges as are so noted, except as herein provided.

SECTION 9. No registration based on tax title until after five years adverse possession.

SEC. 9. No title derived through sale for any tax or assessment shall be entitled to be first registered, unless it shall appear to the satisfaction of the Court, upon the hearing of the application, that the applicant, or those through whom he claims title, have been in the open, actual, continuous, uninterrupted, undisputed, exclusive, and adverse possession of the land under such title at least five years, and have paid all taxes and assessments legally levied thereon for five successive years.

SECTION 10. Amendment to application verified.

SEC. 10. The application may be amended only by petition verified as in the case of the original. Such amendment may be ordered by the Court on its own motion, or upon the motion of any person interested in the proceeding.

SECTION 11. Filing of application to be notice to subsequent purchasers.

SEC. 11. The filing of the application in the office of the County Clerk shall be sufficient notice of the same to all subsequent purchasers or incumbrancers without the filing of a *lis pendens* in the office of the Recorder.

SECTION 12. Court to return application, or set it for hearing.

SEC. 12. The Court shall in its discretion examine the abstract itself, or refer the same, as provided in section seventeen of this Act. If it shall appear to the Court, from an examination of the abstract or from the report of the referee, that the title to the land described in the application is substantially as alleged by the applicant, the application shall be set for hearing, otherwise the Court may order the application returned.

SECTION 13. Notice of hearing to be given; any one may appear and object; costs.

SEC. 13. When the time and place for hearing the application is fixed by the Court, notice thereof shall be given to all parties interested, as shown by the petition and the abstract or referee's report, and to the husband or wife of the applicant, if married, in the same manner as the service of a summons in a civil action; *provided*, that no copy of abstract or map need be served with the petition. Any person interested may appear and object to the granting of the application, and if such objection is sustained, the costs of the same shall be paid by the applicant; if not, by the person so objecting.

SECTION 14. Upon the hearing the Court to take evidence on the allegations of petition; and may adjourn hearing.

SEC. 14. Upon the day set for the hearing of the application, or at such time as the same may be continued to, the Court shall cause examination to be made into the applicant's title to the land in question, and shall hear testimony as to the allegations of the petition, or of any objections thereto; and if any defects are found in the application, or in the applicant's title to the land, or if any of the allegations of the petition are found to be untrue, or any objections to said petition are sustained, the Court may dismiss such application, or may give the applicant such further time as the Court may deem reasonable, before finally passing upon his application.

SECTION 15. Decree setting forth title to be made by Court on granting application.

SEC. 15. If it shall be made to appear, to the satisfaction of the Court, that the facts stated in the application are true, and that the applicant is the owner of the land, or interested therein, as set forth in the petition, the Court shall duly make, give, and enter a decree to that effect, which said decree shall contain an accurate description of the property in question, with a diagram thereof, and also shall set forth all liens and incumbrances on said land, with the name of the holder thereof, and the nature, amount, and order of the same, and, if recorded, the book and page of the record.

SECTION 16. Registrar to issue Certificate of Title upon filing of certified copy of Decree.

SEC. 16. A certified copy of such decree shall be filed in the office of the Registrar, who shall thereupon issue a certificate of title to the person entitled thereto as shown by said decree, and shall proceed to bring said land under the operation of this Act, as herein provided. Said certificate shall contain the description of the property set forth in the decree, and shall also show the nature, amount, and order of the liens thereon.

SECTION 17. Court to appoint referee; compensation of searcher and of referee.

SEC. 17. Upon the filing of the petition the Court may appoint a referee to examine and report upon the abstract accompanying the same. Such referee shall be an attorney in good standing, skilled in the examination of titles, of not less than three years' practice at the bar of the Court so appointing him. The compensation of the searcher and of the referee shall be fixed by the Court, or agreed upon between themselves and the applicant, and shall be paid by the applicant as a part of the costs of the proceeding.

SECTION 18. Written opinion of referee to be filed before decree made.

SEC. 18. Whenever such abstract shall be made and such referee appointed, no decree shall be entered by the Court until the written opinion of such referee shall be filed in the proceeding, showing the nature of the applicant's title in the land; and if the same is subject to any lesser estate, mortgage, lien, or charge, particularly specifying the same and the priority thereof. The estate of homestead shall be included in the term "lesser estate."

SECTION 19. Applicant may withdraw application upon payment of fees at any time prior to issuance of certificate of title.

SEC. 19. Any applicant may, upon payment of all fees due, withdraw his application for registration at any time prior to the issuing of a certificate of title; and upon the written request of such applicant and the order of the Court, the Clerk shall return to the applicant all abstracts of title, deeds, and other instruments, except depositions or affidavits deposited by him for the purpose of supporting his application.

SECTION 20. On transfer of interest or death of applicant, proceedings may be continued.

SEC. 20. In case of the death or any disability of the applicant, the Court, on motion, may allow the proceeding to be continued by or against his representative or successor in interest. In case of any other transfer of interest the proceeding may be continued in the name of the original applicant, or the Court may allow the person to whom the transfer is made to be substituted in the proceeding.

SECTION 21. Registrar to keep record of particulars of issuance.

SEC. 21. The Registrar shall immediately, upon the registration of any land, make an entry in a book kept by him for that purpose, showing the name of the person to whom the certificate was issued, its number, the day, hour, and minute of its issuance, the name of the person to whom the duplicate certificate was delivered, and the book and page where the original certificate is entered or recorded.

SECTION 22. Certificate of title to be in duplicate; its contents; original to be retained by Registrar.

SEC. 22. Every first and subsequent certificate of title shall be in duplicate and numbered consecutively and bear date the year, month, day, hour, and minute of its issue, and be under the hand and official seal of the Registrar, one copy of which shall be retained by the Registrar and be known as the original, and the other shall be delivered to the owner, or person acting for him, and be known as the duplicate. It shall state whether the owner, except in the case of a corporation, executor, administrator, assignee, or other trustee, is married or not

married, and the name of the husband or wife. If the owner is a minor it shall state his age; if under any other disability, the nature of the disability. If issued to an executor or administrator, the certificate shall show the name of the deceased testator or intestate; if to an assignee in insolvency, the name of the insolvent. The Registrar shall note at the end of the certificate, original and duplicate, in such manner as to show and preserve their priorities, the particulars of all estates, mortgages, liens, incumbrances, and charges to which the owner's title is subject.

SECTION 23. Form of certificate.

SEC. 23. No particular form of certificate of title is required, but the same may be, subject to such changes as the case may require, substantially in the following form:

STATE OF CALIFORNIA, }
County of ———. } ss.

A. B. (state occupation and residence, giving street and number), State of California, (if an administrator, give the name of the deceased; if a minor, give his age; if under other disability, state its nature), married to (name of husband or wife, or if not married so state), is the owner of an estate in fee simple (or as the case may be) in the following land (insert description contained in the decree). Subject, however, to the estates, easements, liens, incumbrances, and charges hereunder noted. (In case of trust, condition, or limitation, say "in trust," or "upon condition," or "with limitation," as the case may be.)

1. Mortgage to C. D. for the sum of \$——, dated June 20, 1894, payable two years after date, with interest at ——— per cent per annum, interest payable semi-annually, or compounded.

2. Mechanic's lien in favor of X. Y. for \$——, filed September 24, 1894.

3. Assessment for improvement of Girard Street. Amount \$——, due October 5, 1894.

(Any other incumbrances or charges.)

In witness whereof, I have hereunto set my hand and caused my official seal to be affixed, this ——— day of October, 189 .

Registrar of Titles in and for the County of ———, State of California.

[SEAL.]

SECTION 24. Tenants in common may receive each a certificate.

SEC. 24. In all cases where two or more persons are entitled as tenants in common to an estate in registered land, such persons may receive one certificate for the entirety, or each may receive a separate certificate for his undivided share.

SECTION 25. Registered owner may consolidate several or divide up one certificate.

SEC. 25. Upon the application of any registered owner of land held under separate certificates of title, or under one certificate, and delivering up of such certificate or certificates of title, the Registrar may issue to such owner a single certificate of title for the whole of such land, or several certificates, each containing a portion of such land, in accordance with such application, and as far as the same may be done consistently

with any regulations at the time being in force, respecting the certificates of land that may be included in one certificate of title; and upon issuing any such certificate of title said Registrar shall indorse on the last previous certificate of title of such land so delivered up a memorila, setting forth the occasion of such cancellation and referring to the volume and *folium* of the new certificate or certificates of title so issued.

SECTION 26. Certificate may be issued by order of Court in lieu of lost duplicate; proceedings therefor.

SEC. 26. In the event of a duplicate certificate of title being lost, mislaid, or destroyed, the owner may apply to the Court for an order upon the Registrar to issue a certified copy of the original certificate of registration. Upon the hearing of such application, the Court may order such notice to be given to such persons, and for such time as it may deem proper. If the Court is satisfied that the applicant is the person named in the original certificate on file in the Registrar's office, and that the duplicate certificate has been lost, mislaid, or destroyed, the Court shall make an order directing the Registrar to issue a certified copy of the original certificate to the applicant. A certified copy of such order shall be filed in the Registrar's office, who shall thereupon issue to such applicant a certified copy of the original certificate, with the memorials and notations appearing upon the register, and shall note upon the register the fact, cause, and date of such issue, and shall also mark upon such certified copy: "Owner's certified copy, issued in place of lost (mislaid, or destroyed, as the case may be) certificate," and such certified copy shall stand in the place of, and have like effect, as the missing duplicate certificate. In case of a lost certificate, no transfer of the land shall be made until such certified copy is issued by the Registrar. A certified copy of the certificate of title may be issued by the Registrar for use as evidence, upon the receipt by him of an order therefor made by the Court; *provided*, that such certified copy shall have written or stamped across the face thereof the words "for use as evidence only." The issuance of such certified copy and the purpose thereof shall also be noted upon the original certificate by the Registrar.

SECTION 27. Change of name or of description to be noted on order of Court.

SEC. 27. If an owner's name or description is incorrectly registered, or becomes changed (*e. g.* by marriage, adoption, divorce, etc.), the Court, upon the filing of an application and proof of facts in the manner set forth in section twenty-six of this Act, and the production by the owner of the duplicate certificate, shall order the Registrar to issue a new certificate, with such changes as the case may require.

THE REGISTER OF TITLES.

SECTION 28. Original certificate to be entered in register; memorials to be on latest certificate.

SEC. 28. The Registrar shall keep a book, to be known as the "Register of Titles," wherein he shall enter all original certificates of title, in the order of their numbers, with appropriate blanks for the entry of memorials and notations allowed by this Act. Each certificate, with such blanks, shall constitute a separate *folium* of such book. All memorials and notations that may be entered upon the register under the terms of this Act shall be entered upon the *folium* constituted by the last certificate of title of the land to which they relate.

SECTION 29. Receipt to be given for duplicate certificate on its issuance.

SEC. 29. Before the delivery of any duplicate certificate of title, a receipt for it shall be required to be signed by the owner. Where such receipt is signed in the presence of the Registrar or a deputy, it shall be witnessed by such officer. If signed elsewhere, it shall be acknowledged before any officer authorized to take acknowledgments of deeds.

SECTION 30. First registration deemed complete on notation of original entries upon certificates.

SEC. 30. In every case of first registration of land or an estate or interest therein, the same shall be deemed to be registered under this Act, when the Registrar shall have marked upon the certificate of title, in duplicate, the volume and *folium* of the register in which the original may be found.

SECTION 31. Transfer complete on notation upon new certificate; other dealings complete on notation; registration to relate back to filing with Registrar.

SEC. 31. Every transfer of registered land shall be deemed to be registered under this Act, when the new certificate to the transferee shall have been marked, as in the case of the first registration; and all other dealings shall be considered as registered when the memorial or notation shall have been entered in the register upon the *folium* constituted by the existing certificate of title of the land. But, for the protection of the transferee or person claiming through any transfer or dealing, the registration shall relate back to the time of filing in the Registrar's office the deed, instrument, or notice, pursuant to which the transfer memorial or notation is made.

EFFECT OF REGISTRATION.**SECTION 32. In absence of fraud, title to be subject only to noted incumbrances; exceptions.**

SEC. 32. The registered owner of any estate or interest in land brought under this Act shall, except in case of fraud to which he is a party, or of the person through whom he claims without valuable consideration paid in good faith, hold the same subject only to such estates, mortgages, liens, charges, and interests as may be noted in the last certificate of title in the Registrar's office, and free from all others, except:

1. Any subsisting lease or agreement for a lease for a period not exceeding one year, where there is actual occupation of the land under lease. The term "lease" shall include a verbal letting.

2. All public highways embraced in the description of the lands included in the certificate.

3. Any subsisting right of way or other easement, however created, upon, over, or in respect of the land.

4. Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.

5. Such right of action or claim as is allowed by this Act.

SECTION 33. No adverse possession after registration possible.

SEC. 33. After land has been registered no title thereto adverse or in derogation to the title of the registered owner shall be acquired by any length of possession.

SECTION 34. Presumption of good faith in purchaser of registered land.

SEC. 34. Except in case of fraud, and except as herein otherwise provided, no person taking a transfer of registered land, or any estate or interest therein, or of any charge upon the same from the registered owner, shall be held to inquire into the circumstances under which, or the consideration for which, such owner or any previous registered owner was registered, or be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand, or interest; and the knowledge that any unregistered trust, lien, claim, demand, or interest is in existence shall not of itself be imputed as fraud.

SECTION 35. In absence of fraud, certificate of title is conclusive evidence in suit for specific performance of contract to purchase.

SEC. 35. In any suit for specific performance brought by a registered owner of any land under the provisions of this Act against a person who may have contracted to purchase such land, not having notice of any fraud or other circumstances which, according to the provisions of this Act, would affect the right of the vendor, the certificate of title of such registered owner shall be held in every Court to be conclusive evidence that such registered owner has a good and valid title to the land, and for the estate or interest therein mentioned or described.

SECTION 36. In ejectment or partition suits, certificate is conclusive evidence.

SEC. 36. In any action or proceeding brought for ejectment, partition, or possession of land, the certificate of title of a registered owner shall be held in every Court to be conclusive evidence, except as herein otherwise provided, that such registered owner has a good and valid title to the land, and for the estate or interest therein mentioned or described, and that such registered owner is entitled to the possession of said land.

SECTION 37. The register to be received as evidence.

SEC. 37. The register of any land, and duly certified copies thereof, shall, except as herein otherwise provided, be received in law and in equity as evidence of the facts therein stated, and as conclusive evidence that the person named therein as owner is entitled to the land for the estate or interests therein specified.

SECTION 38. Memorial to be noted until cancellation.

SEC. 38. Whenever a memorial has been entered, as permitted by this Act, the Registrar shall carry the same forward upon all certificates of title until the same is cancelled in some manner authorized by this Act.

SECTION 39. Dealings subsequent to first registration subject to Act.

SEC. 39. All dealings with land or any estate or interest therein, after the same has been brought under this Act, and all liens, incumbrances, and charges upon the same subsequent to the first registration thereof, shall be deemed to be subject to the terms of this Act, and to such amendments and alterations as may hereafter be made.

SECTION 40. Five years' limitation to bringing of action affecting registered land; incompetents to appear.

SEC. 40. No person shall commence any action at law or in equity for the recovery of land, or assert any interest, right in, or lien or demand upon the same, or make entry thereon adversely to the title or interest

certified in the first certificate bringing the land under the operation of this Act, unless within five years after the first registration. It shall not be an exception to this rule that the person entitled to bring the action or make the entry is an infant, lunatic, or is under any disability, but action may be brought by such person by his next friend or guardian. It shall be the duty of the guardian, if there is any, to bring action in the name of his ward whenever it is necessary to preserve or enforce the ward's rights in registered land.

SECTION 41. Claim to arise after expiration of five years preserved by noting memorial; proceedings subsequent.

SEC. 41. Any person having any interest, right, title, lien, or demand, whether vested, contingent, or inchoate, in, to, or upon registered land, which existed at the time the land was first registered, and upon or for which no cause of action shall have accrued at the date of the registration of the land, may, prior to the expiration of said five years after such registration, file in the Registrar's office a notice, under oath, setting forth his interest, right, title, lien, or demand, and how and under whom derived, and the character and nature thereof; and if such claim is so filed an action may be brought to assert or recover or enforce the same at any time within one year after the right of action shall have accrued thereon, or at any time within the period of five years after said first registration, and not afterwards. It shall be the duty of a life tenant or trustee to file such claim on behalf of any remainderman or reversioner, whether the remainder or reversion be at the time vested or contingent, and of a guardian to file such claim on behalf of his ward.

TRANSFERS.

SECTION 42. Title passes on filing of deed and of duplicate.

SEC. 42. A registered owner of land desiring to transfer his whole estate or interest therein, or some distinct part or parcel thereof, or some undivided interest therein, or to grant out of his estate an estate for life or for a term of not less than ten years, may execute to the intended transferee a deed or instrument of conveyance in any form authorized by law for that purpose. And upon filing such deed or other instrument in the Registrar's office, and surrendering to the Registrar the duplicate certificate of title, the transfer shall be complete and the title so transferred shall vest in the transferee; thereupon the Registrar shall issue in duplicate and register, as hereinbefore provided, a new certificate, certifying the title to the estate or interest in the land desired to be conveyed to be in the transferee, and shall note upon the original and duplicate certificate the date of the transfer, the name of the transferee, and the volume and *folium* in which the new certificate is registered, and shall stamp across the original and surrendered duplicate certificate the word "cancelled," in whole or part, as the case may be.

SECTION 43. New certificate to issue for remainder, if but a parcel be transferred.

SEC. 43. When only a part of the land described in a certificate is transferred, or some estate or interest in the land is to remain in the transferer, a new certificate shall be issued to him for the part, estate, or interest remaining in him.

SECTION 44. Time of filing to be noted on instrument.

SEC. 44. The Registrar shall mark as filed every deed, mortgage, lease, and other instrument which may be filed in his office, in the order of its receipt, and shall note thereon at the date of filing the minute, hour, day, and year it is received. When the date of filing any instrument is required to be entered upon the register it shall be the same as that indorsed upon such instrument.

SECTION 45. Papers filed to be retained.

SEC. 45. All instruments, notices, and papers required or permitted by this Act to be filed in the office of the Registrar shall be retained and kept in such office.

SECTION 46. Existing forms of deeds may be used.

SEC. 46. Like forms of deeds, mortgages, leases, and other instruments as are now or may hereafter be sufficient in law for the purpose intended, may be used in dealing with registered land and any estate or interest therein. But an indorsement, duly acknowledged, upon the duplicate certificate of title, substantially in the following form, viz.: "I, —, grant to — the real property described in this certificate. Witness — hand — and seal — this — day of —, —," shall be sufficient to transfer the property in said certificate described.

SECTION 47. Name and address to be indorsed on instrument, and notices to be sent there.

SEC. 47. On all instruments presented to the Registrar for registration shall be indorsed the name and address of the person so presenting the same, and all notices relating to the land therein described may be served on such person at such address. The address may be changed from time to time by such person filing with the Registrar a written notice of such change.

SECTION 48. Instrument affecting registered land to be but a contract until registered.

SEC. 48. A deed, mortgage, lease, or other instrument purporting to convey, transfer, mortgage, lease, charge, or otherwise deal with registered land, or any estate or interest therein, or charge upon the same, other than a will or a lease not exceeding one year where the land is in the actual possession of the lessee or his assigns, shall take effect only by way of contract between the parties thereto, and as authority to the Registrar to register the transfer, mortgage, lease, charge, or other dealing upon compliance with the terms of this Act. On the filing of such instrument the land, estate, interest, or charge shall become transferred, mortgaged, leased, charged, or dealt with according to the purport and terms of the deed, mortgage, lease, or other instrument. The Registrar shall immediately, upon the filing of such instrument, stamp or write upon the original and duplicate certificates of title the word "transferred," "mortgaged," "leased," or otherwise, as the case may require, with the date of filing such instrument.

SECTION 49. Certificate before re-transfer, etc., must show freedom from tax sale and homestead.

SEC. 49. No transfer of title to land, or any estate or interest therein, or mortgage, shall be registered, if the last original certificate shows that the land has been sold for any tax or assessment upon which a deed

has been given, and that the title is outstanding, or upon which a deed may thereafter be given, or if said certificate shows that the estate of homestead, if any, has not been released or extinguished, unless the transfer or mortgage is intended to be subject to such tax sale or homestead estate, in which case it shall be so stated in the certificate of title.

SECTION 50. Certificate to state marriage or representative capacity, if any.

SEC. 50. Every certificate of title to land shall state whether the transferee (except when the latter is a corporation, executor, administrator, or assignee) is married or not married, and if married, the name of the husband or wife. If the transferee be an executor or administrator, the certificate shall give the name of the deceased testator or intestate, and if the transferee be an assignee, the name of the insolvent. The transferee shall furnish the Registrar the necessary information before he shall be entitled to have the land transferred to him on the register.

SECTION 51. Order of Court necessary for sale of land of insolvent and probate estates; confirmation and issuance of certificates thereof.

SEC. 51. Executors, administrators, and assignees in insolvency shall have no power of sale of lands registered in their names as such, without an order of Court obtained for that purpose. Before any certificate can be issued to the purchaser, such sales shall be reported for confirmation to the Court under whose authority such executor, administrator, or assignee is acting, and if confirmed a duly certified copy of the order of confirmation shall be filed in the office of the Registrar, and a memorial thereof entered upon the certificate of title. Upon the filing of the certified copy of such order of confirmation and the entry of such memorial, the Registrar shall issue a certificate to the purchaser at such sale, which certificate, in addition to the usual contents thereof, shall refer to the said order of confirmation. Such order of confirmation shall be conclusive evidence that the sale was in all respects conducted in accordance with law, and the purchaser shall not be bound to inquire into the regularity of the proceeding, or power of the executor or administrator to make such sale.

SECTION 52. Power of sale of executor to be noted.

SEC. 52. If a testator, by his will, has provided that the executor thereof shall have a power of sale of real estate, the Court shall direct the Registrar to register the words "with power of sale," in respect of the land of the deceased.

MORTGAGES, LEASES, AND OTHER CHARGES.

SECTION 53. Incumbrance on registered land must be registered.

SEC. 53. Every mortgage, lease, contract to sell, or other instrument intended to create a lien, incumbrance, or charge upon registered land, or any interest therein, shall be deemed to be a charge thereon, and must be registered as hereinafter provided.

SECTION 54. Incumbrance created on filing of charge.

SEC. 54. On the filing of the instrument intended to create the charge in the Registrar's office, and the production of the duplicate certificate of title, and it appearing from the original certificate of title that the person intending to create the charge has the title and right to

create such charge, and the person in whose favor the same is sought to be created being entitled by the terms of this Act to have the same registered, the Registrar shall enter upon the proper *folium* of the register, and also upon the duplicate certificate, a memorial of the purport thereof, and the date of filing the instrument, with a reference thereto, by its file number, which memorial shall be signed by the Registrar. The Registrar shall also note upon the instrument on file the volume and *folium* of the register where the memorial is entered.

SECTION 55. Trust deed to be treated as a mortgage.

SEC. 55. A trust deed in the nature of a mortgage shall be deemed to be a mortgage, and be subject to the same rules as a mortgage.

SECTION 56. If instrument charging land be in duplicate or more parts, but one need be filed.

SEC. 56. When any mortgage, lease, or other instrument, creating or dealing with a charge upon registered land or any estate or interest therein, is in duplicate, triplicate, or more parts, only one of the parts need be filed and kept in the Registrar's office; but the Registrar shall note upon the register whether the same is in duplicate, triplicate, or as the case may be, and shall also mark upon the others "mortgagee's duplicate," "lessor's duplicate," "lessee's duplicate," or as the case may be, and note upon the same the date of filing and the volume and *folium* of the register where the memorial is entered, and deliver them to the parties entitled thereto.

SECTION 57. Certified copies identified as such may be issued.

SEC. 57. When an instrument is not executed in a sufficient number of parts for the convenience of the parties, the Registrar may make and deliver to each of the parties entitled thereto certified copies of the instrument filed in his office, with the indorsements thereon, marking the same "mortgagee's certified copy," "lessor's certified copy," or as the case may be, and shall note upon the register the fact of issuing such copies. Such certified copies shall have the same force and effect and be treated as duplicates.

SECTION 58. Assignment of charge by filing and noting of same by memorial.

SEC. 58. The holder of any charge upon registered land, desiring to transfer the same or any part thereof, may execute an assignment of the whole or any part thereof, and upon such assignment being filed in the office of the Registrar, and the production of the duplicate or certified copy of the instrument creating the charge held by the assignor, the Registrar shall enter in the register, opposite the charge, a memorial of such transfer, with a reference to the assignment by its file number; he shall also note upon the instrument on file in his office intended to be transferred, and upon the duplicate or certified copy thereof produced, the volume and *folium* where the memorial is entered, with the date of the entry. The transferee shall be entitled to have a certified copy of the instrument of transfer, with the indorsement thereon, and in case of the transfer of the entire charge, the duplicate or certified copy of the instrument creating the charge.

SECTION 59. Release of part or whole of charge to be noted as an assignment.

SEC. 59. A release, discharge, or surrender of a charge, or any part thereof, or of any part of the land charged, may be effected in the same way as above provided in the case of a transfer. In case only a part of the charge or of the land is intended to be released, discharged, or surrendered, the entry shall be made accordingly; but when the whole is released, discharged, or surrendered at the same or several times, the Registrar shall stamp across the instrument on file, and the memorial thereof, and the duplicate or certified copy produced, the word "cancelled."

SECTION 60. Charges to be enforced as at present, except as herein provided and except that notice of lis pendens must be filed with Registrar.

SEC. 60. All charges upon registered land, or any estate or interest in the same, may be enforced as now allowed by law, and all laws with reference to the foreclosure and release or satisfaction of mortgages shall apply to mortgages upon registered land, or any estate or interest therein, except as herein otherwise provided, and except that until notice of the pendency of any suit to enforce or foreclose such charge is filed in the Registrar's office, and a memorial thereof entered on the register, the pendency of such suit shall not be notice to the Registrar, or any person dealing with the land or any charge thereon.

ATTORNEYS IN FACT.**SECTION 61. Attorney in fact to deal with registered land must file his power.**

SEC. 61. Before any person can convey, charge, or otherwise deal with registered land, or any estate or interest therein, as attorney in fact for another, the deed or instrument empowering him so to act shall be filed with the Registrar, and a memorial thereof entered upon the original and duplicate certificates. If the attorney shall so desire, the Registrar shall deliver to him a certified copy of the power of attorney, with the indorsements thereon. Revocation of a power may be registered in like manner.

TRUSTS, CONDITIONS, AND LIMITATIONS.**SECTION 62. Trusts, etc., to be noted without any of the particulars.**

SEC. 62. Whenever a deed or other instrument is filed in the Registrar's office for the purpose of effecting a transfer of, or charge upon, registered lands, or any estate or interest therein, and it appears from such instrument that the transfer or charge is to be in trust, or upon any condition or limitation therein expressed, the Registrar shall note in the certificate, and the duplicate thereof, or memorial, the words "in trust," or "upon condition," or "with limitations," as the case may be, but no entry shall be made of the particulars of any such trust, conditions, or limitations.

SECTION 63. Every trustee, unless express limitation, shall have power of sale.

SEC. 63. The trustee or transferee in any such instrument named, if the instrument contains the words "with power of sale," shall have power to deal with the land as the owner thereof; and a *bona fide* purchaser, mortgagee, or lessee is not bound to inquire into or determine whether or not the acts of such trustee are in accordance with the terms

and conditions of the trust. When such power is conferred the Registrar shall note upon the certificate and duplicate thereof the words "with power of sale."

SECTION 64. No trustee, with limitation, shall sell without order of Court to sell.

SEC. 64. If, however, such instrument does not contain the words "with power of sale," such trustee shall have no power to sell or otherwise deal with the land without an order of Court so to do, duly given and made, a certified copy of which said order shall be filed with the Registrar and a memorial thereof entered upon the certificate of title, and shall be conclusive evidence as against all persons that the authority of such trustee was duly executed in accordance with the true intent and meaning of the trust, condition, or limitation.

SECTION 65. Trustee under will shall have power to sell unless it be withheld.

SEC. 65. A trustee under any will admitted to probate, unless such power shall have been expressly withheld by the terms of such will, shall have power to deal with any registered land held by him in trust as fully in every respect as if such lands belonged to him individually.

ESTATES IN PROBATE, IN INSOLVENCY, AND IN EQUITY PROCEEDINGS.

SECTION 66. Existing statutes governing probate, insolvency, and equity proceedings, not affected.

SEC. 66. The distribution, transfer, leasing, mortgaging, or other change in the status of the title of registered land that is within the jurisdiction of any Court by reason of the pendency of probate, insolvency, or equity proceedings, shall be made under the same conditions and limitations as now provided by the law of this State.

SECTION 67. Orders of sale, decrees of distribution, etc., to contain direction to Registrar.

SEC. 67. The Court in its order or decree making such distribution, transfer, leasing, mortgaging, or other change in the status of the title of registered land, shall direct the Registrar to issue a certificate of title, or to note a memorial of the transaction, as the case may require, in accordance with such order or decree.

SECTION 68. Certified copy of order, decree, deed, and confirmation to be filed with Registrar.

SEC. 68. The executor, administrator, assignee, receiver, or other person acting under the direction of said Court, shall file with the Registrar a certified copy of such order or decree, also the deed, lease, mortgage, or other instrument executed in accordance with such order or decree, and also a certified copy of the order or decree confirming such sale, lease, mortgage, or other transaction, when such confirmation is required by law.

SECTION 69. Registrar to issue certificate or note memorial, such to be conclusive.

SEC. 69. Thereupon the Registrar shall issue the certificate of title, or note the memorial, as the case may require; and such certificate of title or memorial noted shall be conclusive evidence in favor of all persons thereafter dealing with said land.

TAX SALES.

SECTION 70. Notice of purchase to be filed and mailed.

SEC. 70. A purchaser of registered land sold for any tax or assessment, shall, within one day after such purchase, file in the office of the Registrar a written notice of such purchase. And thereupon the Registrar shall enter a memorial thereof upon the certificate of title, and shall mail to each person named in the certificate, or in the memorials thereon, a copy of said notice, a sufficient number of said copies to be furnished to the Registrar by said purchaser at the time of filing said notice. In case the State or a municipal corporation becomes the purchaser of land sold for any tax or assessment, the Tax Collector shall, within one day thereafter, file with the Registrar a notice to that effect. And thereupon the Registrar shall enter a memorial thereof upon the register, and shall mail notices to interested parties, as in the case of an individual purchaser.

SECTION 71. Sale void unless presentation of certificate within three months made and notice given.

SEC. 71. The holder of any certificate of sale of registered land or any estate or interest therein, for any tax, assessment, or imposition, shall, within three months after date of sale, present the same to the Registrar, who shall thereupon enter on the register of the land a memorial thereof, stating the day of sale and the date of presentation, and shall also note upon the certificate of sale the date of presentation and the book and page of the register where the memorial is entered. The holder of such certificate shall also, within the same time, mail to each of the persons who appear by the register to have any interest in the land a notice of the registration of such certificate. Unless such certificate is presented and registered and notice given as herein provided, within the time above mentioned, the land shall be forever released from the effect of such sale, and no deed shall be issued in pursuance of such certificate. When it shall appear by the affidavit of the holder of the certificate filed with the Registrar that the place of residence of any person interested in the land cannot, upon diligent inquiry, be ascertained, the requirement of this section as to the mailing of notice shall not apply to such person.

SECTION 72. Tax deed already issued must be registered.

SEC. 72. A tax deed of registered land, or of any estate or interest therein, issued in pursuance of any sale for tax or assessment made after the taking effect of this Act, may be presented by the holder thereof to the Registrar, who shall thereupon enter upon the register a memorial of such deed; but such deed shall have only the effect of an agreement for the transfer of the title, and no certificate of title shall be issued thereon unless the deed is so filed within thirty days of its date, nor unless it shall appear to the Registrar that all persons appearing upon the register to be interested in the land, and also the person who appears, by the Tax Collector's books, to have paid the tax last paid before the sale on which the deed is issued, have had thirty days' notice of the filing of such deed and the application for such certificate of title, and that the terms of this Act have been complied with.

SECTION 73. Notice to be personal or by mail and publication.

SEC. 73. The notice required in the above section shall be given upon all persons residing in the State by personal service, and upon all persons living out of the State by mail and by publication. If such personal service be made by a Sheriff or Constable, his certificate, and if by any other person, his affidavit, shall be sufficient proof thereof. In case the place of residence of any person is not known to the Registrar or the holder of such deed, notice shall be given by publication in a newspaper of general circulation in the county in which the land is situated, at least once a week for four consecutive weeks. Proof of such publication must be made in the manner now or hereafter required by the laws of this State.

SECTION 74. Decree of Court necessary if objection filed.

SEC. 74. Any person so notified may file with the Registrar his written objection to the issuance of such certificate, a memorial of which shall be entered upon the register. In such case no certificate of title shall be issued to the holder of such tax deed unless he presents to the Registrar a certified copy of the decree of a Court of competent jurisdiction, quieting the title to said lands in him. Upon the presentation of such certified copy, or in case no objection is filed within thirty days after personal service of the required notice, or within thirty days after completion of the publication of such notice, the Registrar shall cancel the certificate for such land, and issue a new certificate to the holder of such deed.

SECTION 75. On redemption, memorial to be cancelled.

SEC. 75. Upon presentation to him of a certificate of redemption from any tax sale, the Registrar shall cancel the memorial of said sale upon the certificate of title.

LIS PENDENS; NOTICE OF ACTION.**SECTION 76. Notice to affect registered land must be filed with Registrar.**

SEC. 76. No suit, bill, or proceeding at law or in equity for any purpose whatever, affecting registered land, or any estate or interest therein, or any charge upon the same, shall be deemed to be *lis pendens* or notice to any person dealing with the same until notice of the pendency of such suit, bill, or proceeding shall be filed with the Registrar and a memorial thereof entered by him upon the register of the last certificate of the title to be affected; *provided, however*, this section shall not apply to attachment proceedings when the officer making the levy shall file his certificate as hereinafter provided.

SECTION 77. Certified copy of judgment or decree must be filed.

SEC. 77. No judgment, or decree, or order of any Court shall be a lien on or in anywise affect registered land, or any estate or interest therein, until a certified copy of such judgment, decree, or order, under the hand and official seal of the Clerk of the Court in which the same is of record, is filed in the office of the Registrar, and a memorial of the same is entered upon the register of the last certificate of the title to be affected.

LIENS, EXECUTIONS, ATTACHMENTS, ETC.

SECTION 78. Certificate of levy of attachment, or execution, must be filed.

SEC. 78. Whenever registered land is levied upon by virtue of any writ of attachment, execution, or other process, it shall be the duty of the officer making such levy to file with the Registrar a certificate of the fact of such levy, a memorial of which shall be entered upon the register; and no lien shall arise by reason of such levy until the filing of such certificate and the entry in the register of such memorial, any notice thereof, actual or constructive, to the contrary notwithstanding.

SECTION 79. Notice of mechanics' liens must be filed.

SEC. 79. Notice of liens under the provisions of the mechanics' lien laws of this State shall be filed in the Registrar's office, and a memorial thereof entered by him upon the register, as in the case of other charges, and such liens may be enforced as now or hereafter allowed by law. Until such notice is so filed and registered no lien shall be deemed to have been created.

SECTION 80. Notice of assessments for street improvements, sewers, etc., must be filed by Clerk.

SEC. 80. When in a city, town, or county, an ordinance, resolution, or order is passed or made, to lay out, establish, alter, widen, grade, regrade, relocate, or construct or repair a street, sidewalk, drain, or sewer, or to make any other public improvement, or to do any work, the whole or a portion of the expense for which assessments may be made upon real estate, if any registered land or any land included in an application for registration then pending is affected by the Act or proceeding and liable to such assessment, the Clerk of the Board passing such ordinance, resolution, or order shall, within five days after the passage of such ordinance, resolution, or order, file in the Registrar's office a notice of the passage thereof, and a memorial shall thereupon be noted on the register. In case of the repeal of such ordinance, resolution, or order, the Clerk of said Board, and in case of the satisfaction of any lien thereunder, the Superintendent of Streets or other officer required by law to collect and receive such assessments, shall, within five days thereafter, notify the Registrar, who shall thereupon cancel such memorial.

SECTION 81. No notice necessary in case of lien for labor performed for corporation not complying with law.

SEC. 81. No statutory or other lien shall be deemed to affect the title to registered land until after a memorial thereof is entered upon the register, as herein provided, except in cases of liens for labor performed for a corporation, as provided in the Act of the Legislature of the State of California, approved March thirty-first, eighteen hundred and ninety-one.

SECTION 82. Clerk of Court may file certificate of dismissal of suit or satisfaction of judgment.

SEC. 82. The certificate of the Clerk of the Court in which any suit, bill, or proceeding shall have been pending, or any judgment or decree is of record, that such suit, bill, or proceeding has been dismissed or otherwise disposed of, or the judgment, decree, or order has been satisfied, released, reversed, or overruled, or of any Sheriff or other officer

that the levy of any execution, attachment, or other process certified by him has been released, discharged, or otherwise disposed of, being filed in the Registrar's office and noted upon the register, shall be sufficient to authorize the Registrar to cancel or otherwise treat the memorial of such suit, bill, proceeding, judgment, decree, or levy, according to the purport of such certificate.

CORRECTIONS OF ERRORS IN CERTIFICATE.

SECTION 83. Registrar may apply to Court for correction of errors or mistakes in certificate.

SEC. 83. Whenever it appears to the Registrar that there is an error or omission in any certificate or memorial, or that any certificate or memorial has been made, entered, indorsed, issued, or cancelled by mistake, he may apply to the Court for an order summoning all persons registered as interested in the lands to which such certificate or memorial relates, to appear at an appointed time and place and produce their duplicate certificates and show cause why such omission or mistake should not be corrected, and shall thereupon enter a memorial of such application on the register.

SECTION 84. If all parties consent, Court may order correction of errors or mistakes.

SEC. 84. If at the time and place appointed all such persons appear and consent, the Court may order and direct the Registrar to correct any such error, omission, or mistake on the register and on any duplicate certificate, and may direct the cancellation of any certificate or memorial entered by mistake.

SECTION 85. If all parties do not consent, Court may hear testimony as to alleged error or mistake.

SEC. 85. If such persons, or any of them, fail to appear, or do not consent, the Court may proceed to hear testimony as to such alleged error, omission, or mistake, and if it appear to the satisfaction of the Court that an error, omission, or mistake has been made, he shall order and direct the Registrar to correct the same and to cancel or modify such certificates or memorials as may be necessary to correct such error or mistake. When such error or mistake has been caused by the fault or neglect of the Registrar, the costs of such proceedings shall be paid by the State; if by the fault of any person registered as interested in such land, by such person. A certified copy of the order of Court, directing the correction of any error, omission, or mistake in respect to any certificate or memorial, shall be filed in the Registrar's office before such correction shall be entered or made.

EMINENT DOMAIN.

SECTION 86. Right of eminent domain not affected.

SEC. 86. Nothing in this Act shall be construed to in anywise affect or modify the exercise of the right of eminent domain. When any suit or proceeding shall have been brought in the exercise of such right for the taking of registered land, or any interest therein, or to test the validity of any such taking, or to ascertain and establish the amount of damage by reason of any such taking, it shall be the duty of both parties to the proceeding to see that a certified copy of the judgment or decree

therein is duly filed and a memorial thereof entered upon the register; but in the case of the assessment of damages, no such memorial shall be entered by the Registrar until such damages have been paid, in which event the register shall also show the payment of such damages; *provided, however*, that the deposit with the Treasurer, as allowed by law, of such damages, shall be deemed a payment thereof, and in such case the Treasurer shall forthwith file with the Registrar a certificate of such deposit, and thereupon a memorial thereof shall be entered upon the register.

INDICES.

SECTION 87. Property indices to be kept.

SEC. 87. The Registrar shall keep property indices, the pages of which shall be divided into columns, showing first, the section or subdivision; second, the range or block; third, the township or lot; fourth, any further description necessary to identify the land; fifth, the name of the registered owner; sixth, the volume; and seventh, the page of the register in which the lands are registered.

SECTION 88. Name indices to be kept.

SEC. 88. He shall also keep name indices, the pages of which shall be divided into columns, showing in alphabetical order, first, the names of all registered owners and all other persons interested in or holding charges upon registered land; second, the nature of the interest; third, a brief description of the land; fourth, the volume; and fifth, the page of the register in which the lands are registered.

MISCELLANEOUS PROVISIONS.

SECTION 89. Registered lands may be partitioned.

SEC. 89. An owner of an undivided interest in registered lands may bring an action for the partition thereof. A notice of such action shall, at the time of the commencement thereof, be filed with the Registrar and a memorial entered by him upon the register. A certified copy of any judgment or decree rendered in pursuance of such action shall be filed with the Registrar, who shall thereupon issue new certificates in accordance therewith.

SECTION 90. Registration of adverse lien not conclusive of regularity of proceedings or instruments by which created.

SEC. 90. Whenever, under the provisions of this Act, any interest in, or lien, incumbrance, or charge upon registered land, arises adversely to the registered owner without voluntary action by him, and not in pursuance of a judgment or decree of Court, such registration shall not be conclusive of the regularity of any proceedings or instruments by means of which such interest, lien, incumbrance, or charge arose, or the validity of the same, and shall have no greater force and effect than would the recording, in case the land were not registered, of an instrument creating a similar interest, lien, incumbrance, or charge.

SECTION 91. In case of fraud, rights and remedies the same as if land not under this Act.

SEC. 91. In the case of fraud, any person defrauded shall have all rights and remedies that he would have had if the lands were not under the provisions of this Act; *provided*, that nothing contained in this sec-

tion shall affect the title of a registered owner who has taken *bona fide* for a valuable consideration, or of any person *bona fide* claiming through or under him.

SECTION 92. Clerk of Court shall notify Registrar of appeal.

SEC. 92. In case of an appeal from any proceeding under this Act, or from any judgment, order, or decree affecting registered lands, the Clerk of the Court in which the notice of appeal is filed shall notify the Registrar thereof, and thereupon the Registrar shall enter upon the register a memorial of such appeal.

SECTION 93. All fees collected by Registrar to be paid to County Treasurer and applied to expenses of administration of this Act.

SEC. 93. All fees collected by the Registrar under the provisions of this Act shall be paid by him to the Treasurer of the county, and shall be applied to the expenses of the administration of this Act. Should there be a surplus in any year, such surplus shall be carried into the general fund, and be subject to appropriation for any purpose. In case such fees shall not amount to the sum required for the administration of this Act, the deficiency shall be paid from any funds in the treasury not otherwise appropriated.

PENALTIES.

SECTION 94. Fraudulent procurement of certificate, a felony.

SEC. 94. Whoever fraudulently procures, assists in fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title or other instrument, or of any entry in the register or other book kept in the Registrar's office, or of any erasure or alteration in any entry in any said book, or in any instrument authorized by this Act, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement, or affidavit affecting registered land, shall be guilty of a felony and fined not exceeding five thousand dollars and imprisonment not exceeding five years, or either, or both, in the discretion of the Court.

SECTION 95. Forgery of seal, signature, or instrument in Registrar's office, a felony.

SEC. 95. Whoever (1) forges, or procures to be forged, or assists in forging the seal of the Registrar, or the name, signature, or handwriting of any officer of the registry office in cases where such officer is expressly or impliedly authorized to affix his signature; or (2) fraudulently stamps, or procures to be stamped, or assists in stamping any document with any forged seal of said Registrar; or (3) forges, or procures to be forged, or assists in forging the name, signature, or handwriting of any person whomsoever to any instrument which is expressly or impliedly authorized to be signed by such person; or (4) uses any document upon which any impression, or part of the impression, of any seal of said Registrar has been forged, knowing the same to have been forged, or any document, the signature to which has been forged, knowing the same to have been forged; or (5) swears falsely concerning any matter or procedure made and done in pursuance of this Act, shall be guilty of a felony and imprisoned not exceeding ten years, or fined not exceeding one thousand dollars, or both fined and imprisoned, in the discretion of the Court.

SECTION 96. No proceeding or conviction under this Act shall affect any remedy at law or in equity.

SEC. 96. No proceeding or conviction for any act hereby declared to be a misdemeanor or a felony shall affect any remedy which any person aggrieved or injured by such act may be entitled to at law or in equity against the person who has committed such act, or against his estate.

FEEs.

SECTION 97. Fees same as in similar cases under present laws, except as provided herein.

SEC. 97. *First*—The fees, in respect of applications and proceedings under them prior to registration, shall be the same as in actions in the Superior Court.

Second—There shall be paid to the Registrar:

For issuing a certificate of title, including one duplicate thereof..	\$1 50
For each additional duplicate.....	50
For registering each transfer, including the issue and registration of the new certificate.....	1 50
For entry of each memorial on the register, including the indorsement upon the duplicate certificates	1 00
For the cancellation of each certificate, memorial, or charge	50
For each certificate showing condition of register.....	1 50
For filing any instrument, or for a certified copy of the register, or of any instrument or writing on file in his office, the same fees allowed by law to Recorders for like services.	

CONSTRUCTION.

SECTION 98. Act to be liberally construed. Construction of similar legislation elsewhere, not adopted.

SEC. 98. This Act shall be construed liberally so far as may be necessary for the purpose of effecting its general intent, but does not adopt by implication the construction of any similar legislation of other jurisdictions which this Act may to any extent have followed.

SECTION 99. Act to take effect July 1, 1895.

SEC. 99. This Act shall take effect and be in force from and after the first day of July, eighteen hundred and ninety-five.

THIS BOOK IS DUE ON THE LAST DATE
STAMPED BELOW

AN INITIAL FINE OF 25 CENTS
WILL BE ASSESSED FOR FAILURE TO RETURN
THIS BOOK ON THE DATE DUE. THE PENALTY
WILL INCREASE TO 50 CENTS ON THE FOURTH
DAY AND TO \$1.00 ON THE SEVENTH DAY
OVERDUE.

JUL 9 1947

JUL 26 1947

YC 34783

330743

HD 1308

UNIVERSITY OF CALIFORNIA LIBRARY

